

DBSD still needs the FCC's approval and a bankruptcy judge approval of a reorganization plan to emerge from bankruptcy. A hearing on the reorganization is expected by July 18, the filing said. The application is at <http://xrl.us/bjnyks>.

Dish said it will deploy a hybrid satellite/terrestrial system that will allow access to "a myriad of Internet Protocol-based, over-the-top applications, including mobile video." Dish declined to comment. The company is looking into the necessary amount of spectrum and availability of devices operable with DBSD spectrum that "will be required to launch viable mobile broadband offerings and support the data rates associated with such offerings," it said. Dish noted that its subsidiary owns licenses to 6 MHz of 700 MHz spectrum in 170 markets and that sister company EchoStar owns a minority interest in TerreStar, another S-band licensee in bankruptcy. The ability to combine DBSD's spectrum with other spectrum would add to the "effectiveness and competitiveness of any mobile broadband services," said Dish.

The license transfer will create a new competitor without harming existing competition, said Dish. DBSD doesn't provide any service now, and even a combined DBSD/TerreStar wouldn't eliminate competition, Dish said. If a later transaction resulted in the combined DBSD/TerreStar, the total S-band holdings would only be 40 MHz, less than the FCC's now-abandoned 45 MHz spectrum cap and less than half of the 95 MHz wireless spectrum screen used by the FCC to determine if a concentration warrants further competitive inquiry, said Dish.

EchoStar's purchase of Hughes (CD Feb 15 p10) isn't relevant because Hughes doesn't provide mobile broadband services. There's "significant competitive pressure" in all services offered by MSS operators — voice, low- and high-speed data — as the FCC previously found when approving Harbinger Capital Partners purchase of SkyTerra that created LightSquared. The transaction will also add competition to the wireless market, said Dish. The deal complies with FCC rules and regulations while enhancing competition and saving a company from bankruptcy, said Dish.

Dish can't "afford to sit still" while other TV providers offer bundles of services that include two-way broadband, said Dish Executive Vice President of Sales Tom Cullen in a declaration that accompanied the application. DBS only has one-way capabilities and customers "want and need" a broadband component added to the video services offered by Dish, said Cullen. A mobile broadband service "would be another natural complement" to Dish's service, he said.

The deal for DBSD includes an offer to pay Sprint Nextel \$40 million if Sprint agrees to tender its claims seeking broadcast auxiliary service spectrum relocation costs, the application said. Sprint has sought about \$100 million from each of the S-band licensees for costs it took on to make the band usable for others. If Sprint doesn't tender its claims, Dish and DBSD have agreed to pay Sprint the allowed amount of the claims, as decided by the bankruptcy court, Dish said. — *Tim Warren*

Uncertainty Everywhere

Need, Light Touch Must Be Shown for Any Data Privacy Bill, Says Bono Mack

SAN FRANCISCO — Rep. Mary Bono Mack, R-Calif., said she will take charge of any data-privacy bill that gains steam in the House. "I will lead that effort," as chair of the Commerce, Manufacturing and Trade Subcommittee of the Commerce Committee, she said Monday in a brief video message to

the Adweb 3.0 conference. But it will happen only if research shows that legislation is needed and if it takes an up-to-date regulatory approach, Bono Mack said. She expressed concern that any government action not hold back U.S. economic growth or the competitiveness of American companies around the world, and she called regulatory certainty important in achieving those goals.

Bono Mack did tell business to do more to explain to Internet users the economics of providing content at no cash expense to them and to recognize that sensitivities vary by types of information collected, notably with data that can affect credit, employment and healthcare. Consumers should be allowed to express the expectations they have in visiting websites and using search engines, and those younger than 13 need special protections because they're "unable to protect themselves," she said.

"The Republican Congress probably wants something that is fairly friendly to industry, but they also want to show that they're taking decisive action," TRUSTe President Fran Maier said at the conference. Her company is especially interested in getting safe harbors into any legislation, so participation in industry programs will take care of compliance, she said. Media coverage and Facebook activity have made data privacy a widespread concern "all of a sudden," Maier said. The role of Facebook is independent of whatever the company's privacy policies are, she said.

The chances that this Congress will pass data-privacy legislation are just higher than 50 percent, Maier told us after she spoke. But the issue would "blow up" if a measure is broadened to offline information, because of fierce opposition from retailers, she said. The prospect of successful Do Not Track legislation is only 15 to 20 percent, Maier said. Business wouldn't accept Do Not Track as a default imposed by the government, she said.

The Digital Advertising Alliance offers the "biggest opportunity" for success in self-regulation, Maier said at the conference. The broad alliance seeks widespread adoption of an icon in online advertising for users to click for information about data collection and sharing and for opt-outs from targeted ads. "Don't fear the opt-out," Maier said. Testing indicates that less than 1 percent of consumers take advantage of the choice to opt out, though those who do opt out across the board, not selectively, she said. — *Louis Trager*

Out of Synch?

T-Mobile Raises Broader Issues in Zoning Appeal

T-Mobile asked the 4th U.S. Circuit Court of Appeals in Richmond to overrule a lower court and allow the carrier to install antennas on an electric utility pole, after the application was denied by the Fairfax County Board of Supervisors. The case has broader implications since the 4th Circuit is at odds with other judicial circuits in saying only a "blanket ban" on wireless installations would violate the "effective prohibition" standard of Section 332(c)(7)(B)(i)(II) of the Communications Act.

"This case presents the Court with an opportunity to update the law of this circuit governing the deployment of wireless telecommunications facilities under the federal Communications Act," T-Mobile said. Since the 4th Circuit laid out its standard on what constitutes an effective prohibition in a 1998 case,